loading and unloading, soft coke manufacture, overburden removal and earth cutting, driving of stone grades and miscellaneous stone-cutting; in all these sectors this has been implemented as far back as in 1975. (*Interruptions*)

SHRI GURUDAS DAS GUPTA: The facts are otherwise. The trade unions have complained repeatedly that Labour Ministry is not taking any action.

MR. DEPUTY CHAIRMAN: You cannot go on giving a running commentary.

SHRI P. A. SANGMA: Sir, as I said, this is a Bill through which we are moving towards evolving a uniform labour policy in this country. I would request the House to pass the Bill.

MR. DEPUTY CHAIRMAN: Now, I will put the Resolution to vote.

The question is:

"That this House disapproves of the Contract Laour (Regulation and Abolition) Amendment Ordinance, 1986 (No. 3 of 1986) promulgated by the President on the 28th January, 1986."

The motion was negatived.

MR. DEPUTY CHAIRMAN: I will now put the Motion for consideration of the Bill to vote. The question is:

"That the Bill to amend the Contract Labour (Regulation and Abolition) Act, 1970, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up the clause-by-clause consideration of the Bill.

Clauses 2 and 3 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI P. A. SANGMA: Sir, I beg to move:

"That the Bill be passed."

The question was put and the motion was adopted.

I. STATUTORY RESOLUTION SEEKING DISAPPROVAL OF THE ADMINISTRATIVE TRIBUNALS (AMENDMENT) ORDINANCE, 1986 (No. 1 OF 1986) PROMULGATED BY THE PRESIDENT ON THE 22ND JANUARY, 1986

II. THE ADMINISTRATIVE TRIBUNALS (AMENDMENT) Bill, 1986

श्री कैलाश पति मिश्र (बिहार) : उपसभापति महोदय, मैं 22 जनवरी, 1986 को राष्ट्रपति द्वारा प्रख्यापित प्रशासनिक अधिकरण (संशोधन) अध्यादेश, 1986 (1986 का संख्या 1) का निरनुमोदन करता हूं।

महोदय, इस कारण से यह संशोधन विधेयक लाना पड़ा है, पहले भी जिस कारण से यह विधेयक पारित करना पड़ा, यह स्पष्ट नहीं है। पहली दृष्टि यह होनी चाहिए कि हम किसका हित करना चाहते हैं। सरकार के पास शक्ति है, मोनोपलि ट के पास शक्ति है, इंप्लायर्स के पास शक्ति है। इसमें अगर कोई निरीह व्यक्ति दिखाई देता है तो वह कर्मचारी है चाहे सार्वजनिक क्षेत्र में कार्य कर रहा हो या निजी क्षेत्र में। उसकी कठिनाइयां किस किस प्रकार की हैं, इसकी चर्चा करना आवश्यक है। एक तो अल्प वेतन भोगी हैं, कोई न कोई आरोप लगाकर उसको दंडित कर दिया जाता है। फिर वह ट्राइब्यूनल में जाता है। अगर वहां भी न्याय नहीं मिला तो हाई कोर्ट और सुप्रीम कोर्ट का दरवाजा उसके

[श्री कैलाश पति मिश्र]

लिए खुला रहता है यद्यपि उसमें बहुत परेशानी होनी है। हमें मालूम है कि सरकार के विभाग और बड़े बड़े औद्योगिक घरानों के भी परमेनेंट ऐडवोकेट्स रहते हैं, चाहे हाई कोर्ट में हों या सुप्रीम कोर्ट में लेकिन साधारण कर्मचारी जो दंडित हो गए वेतन नहीं मिल रहा है, नौकरी से छुट्टी मिल गई, ऐसी अवस्था में वह हाई कोर्ट पहुंचे, सुप्रीम कोर्ट पहुंचे, इसमें कितनी कठिनाइयां होती हैं, इस पर विचार किया जाना चाहिए। यह संशोधन भी अधूरा दिखाई दे रहा है। इसमें जो संशोधन किया गया है उसमें कहा गया है कि एक जुडिशल मेम्बर होगा, एक ऐडमिनिस्ट्रेटिव मेम्बर होगा। एक तो समझ में नहीं आता है कि दो मेम्बर मिलकर कोई न्याय देने वाले हैं या सीधे ऐक्जीक्यूटिव अथारिटी के अन्दर काम करने वाले हैं। स्वतंत्र हैं या इंप्लायर सरकार रहे या मोनोपलिस्ट रहे, उसकी कनाइवेंस में चलकर काम करने वाले हैं। मैं कहना चाहता हूं कि संशोधन में साफ साफ उल्लेख करना चाहिए। संशोधन का मतलब होना चाहिए कि कार्यरत हाई कोर्ट या सुप्रीम कोर्ट के मेम्बर। जुडिशल मेम्बर का क्या मतलब है। एक ऐडवोकेट जो 10 साल तक वकालत कर चुका है वह हाई कोर्ट में आने के लिए अधिकृत हो जाता है। कहीं उल्लेख नहीं है कि कार्यरत जज इसका मेम्बर होगा। इसमें इसका प्रावधान होना चाहिए। जब कर्मचारी दंडित होता है, अगर कोर्ट में जाना चाहता है तो दस प्रकार के दरवाजे उसे खटखटाने पडते हैं। फाइल्स इकट्ठी करनी पड़ती है, कभी इसके यहां दौड़ता है, कभी उसके यहां। इसमें भी समय की सीमा लगी हुई है। अगर कहीं पहुंचा दो दिन बाद तो अपना केस फाइल भी नहीं कर सकता। मैं मंत्री महोदय से आग्रह करना चाहूंगा कि ऐसे भुक्त-भोगियों के लिए केस फाइल करने के लिए समय की सीमा तय मत कीजिए। वह जिस समय ट्रायब्यूनल के पास पहुंच जाए उसे आप सुविधा दे दीजिए। अगर देर भी हो गई है तो उसकी एप्लीकेशन स्वीकार करनी चाहिए। इसके साथ ही दूसरा विचार करना भी आवश्यक है। नौकरी से वह छूट गया है, खाने के लिए नहीं है, लेकिन केस लटक रहा है, एक साल, दो साल, तीन साल, चार साल, पांच साल तक फैसला नहीं होता। आप देखेंगे कि जो भी केसेज होंगे उनमें से 60-70 प्रतिशत ऐसे मिलते हैं कि कर्मचारी कहीं जाकर चाहे झाड़ लगाने लगता है, किसी की मृत्यु हो जाती है, कोई कहीं तीसरे स्थान पर जाकर कम वेतन पर काम करता है और अगर वह दरवाजा खटखटाने के लिए कोशिश भी करता है, अपने केस की पैरवी करने से भी वह वंचित हो जाता है। 4-00 P.M समय की सीमा यहां लगाने की आवश्यकता है। फाइल करने में देरी होती है तो वहां समय की सीमा की आवश्यकता नहीं है। एक बार ट्राब्यूनल के पास मुकदमा पहुंच गया तो यहां पर मुकदमों का एक निश्चित अवधि के अन्तर्गत फैसला होना चाहिये। इस संशोधन में इसका प्रावधान होना चाहिये। इसको आप को स्वीकार करना चाहिये। आपने हाई कोर्ट में जाने से रोक दिया लेकिन पूरे विधेयक को पढ़ने के बाद कहीं साफ समझ नहीं आ रहा है कि आप का ट्रायब्यनल किस स्तर का होगा।

[उपसभाध्यक्ष (श्री एम०पी० कौशिक) पीठासीन हुए]

श्री कल्पनाथराय (उत्तर प्रदेश) : वह तो साफ है।

श्री कैलाशपति मिश्र : वह केवल दिल्ली में होंगे, या जहां-जहां हाई कोर्ट हैं वहां होंगे या हाई कोर्ट ब्रांचेज हैं वहां पर होंगे या जिला स्तर पर होंगे, इसका स्पष्टीकरण होना चाहिये । अगर आप उत्तर देंगे तो आप यह बता दें कि हाई कोर्ट के होंगे या हाई कोर्ट की ब्रांचेज जो हैं उनके होंगे तो मुझे प्रसन्नता होगी । इसमें इसका निश्चित प्रावधान होना चाहिये ।

एक और मैं आग्रह करूंगा कि चाहे सरकार हो या मोनोपालिस्ट हों उनके यहां वकीलों की भारी फीस तय रहती है । उनके रिकार्ड में चढ़ती चलती है । जिस दिन जिस केस के लिये वह खड़े हो गये उनकी फीस बन गई । लेकिन बेचारा गरीब जो होता है उसको कौड़ी-कौडी करके पैसा इकट्ठा करना होता है । एक-एक पैसा इकट्ठा करना होता है । ऐसे जो भुक्तभोगी हैं उन्हें लीगल एड मिलनी चाहिये, सहायता मिलनी चाहिये, मुफ्त लीगल ऐड मिलनी चाहिये । उन पर किसी प्रकार का भार नहीं होना चाहिये । उनको इसके लिये काफी दूरी तय करके आना-जाना पड़ता है । इसलिये उसे यात्रा का खर्चा मिलना चाहिये । मुकदमा लड़ने तक उसको जो परेशानी होती है और उस पर जो व्यय होता है वह सरकार वहन करे । कम से कम ऐसी व्यवस्था करिये कि जो सार्वजनिक क्षेत्र या निजी क्षेत्र की कम्पनियां हैं वे क्षेत्र उनकी परेशानियों के खर्च का भार वहन करे । इसके लिए इसमें प्रावधान होना चाहिए ।

नियम कानून तो बनते हैं । अभी मेरे मित्र दास गुप्त जी बोल रहे थे कि लेबर मिनिस्ट्री भी है । उसका अनुभव बड़ा खराब रहा है । लेबर मिनिस्ट्री उसके अफसर कर्मचारियों, के पक्ष में तो खड़े होते हैं लेकिन उसके लिए काम कर रहे हैं या मैनेजमेंट के लिए काम कर रहे हैं, इसमें एक अजीब स्थिति दिखाई दे रही है । लेकिन कम से कम जो कानून बनता है उसका सही अर्थ में पालन हो इसके लिए सरकार को सतर्क रहना चाहिये । जो मैंने मुद्दे उठाये हैं उन मुद्दों का साफ-साफ उल्लेख नहीं दिखाई दे रहा है इसलिए मुझ को इसको डिसअप्रूव करना पड़ रहा है, इसको अस्वीकार करना पड़ रहा है ।

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS (SHRI P. CHIDAMBARAM): Mr. Vice-Chairman, Sir, this House and the Lok Sabha have already debated at great length and passed the Administrative Tribunals Act, 1985. I now beg to move:

"That the Bill to amend the Administrative Tribunals Act, 1985, be taken into consideration."

I shall very briefly state the reasons why Government is coming forward with this Amending Bill.

The Administrative Tribunals Act was challenged by a large number of persons in various High Courts and in the Supreme Court. When the matter came up before the Supreme Court, the Supreme Court was pleased to point out certain features of the Act which required reconsideration by the Government. One of the main features pointed out by the Supreme Court was the composition of the Tribunal. The Supreme Court

[Shri P. Chidambaram]

was the composition of the Tribunal. The Supreme Court felt that the Tribunal should have one judicial Member and one Member from the Services because that alone would advance the purpose of the Act and that alone would ensure that the petitioner who comes before the Triunal would secure justice. After considering the suggestions of the Supreme Court with the respect that they deserve and after pondering over some other aspects of the Act, Government decided to make some amendments and on that basis the Attorney-General was instructed to make a statement in the Supreme Court that amendments will be made to give effect to the suggestions that fell from the Supreme Court. It is in this background that the President promulgated the Ordinance on the 22nd of January 1986 and we are now introducing the Bill to replace the Ordinance and to amend the Act. Honourable Members would have seen the Statement of Objects and Reasons and I am sure they have also read the Memorandum explaining the modifications. The main modifications are. firstly, every Bench of the Tribunal will now consist of one Judicial Member and one Administrative Member. In the unlikely event of a difference of opinion between the two Members, as is provided in every other law, the matter will be referred to the Chairman for a final decision.

SHRI KAILASH PATI MISHRA: There are only two Members one Judicial and one Administrative. Who will be the Chairman?

SHRI P. CHIDAMBARAM: The Chairman is the Chairman of the Administrative Tribunal. That is already in the present Act itself. There is a Chairman of the Administrative Tribunal and the Tribunal sits in various Benches constituted in various cities. Each Bench will consist of one Judicial Member and one Administrative Member, and in a rare case of difference of opinion like it happens today even in a Division Bench of the High Court the matter is referred to the Chief Justice, here the matter will be referred to the Chairman. Then we have taken advantage of this opportunity to bring within the forum of the Tribunal a large number of Government servants who are also workmen within the meaning of the Industrial Disputes Act. The Act as it originally stood at section 2, clause (b) read that the Act shall not apply to any person governed by the provisions of the Industrial Disputes Act in regard to such matters in respect of which he is so governed. The last part of this clause was very ambiguously worded. It gave rise to a number of different interpretations. One could contend that everyone who is a workman is outside the Tribunal. One could also contend that only cases falling under section 2A of the Industrial Disputes Act would not fall within the scope of the Tribunal. But we found that there are a larger number of Government workmen, particularly in the Ordnance factories, in Railways and in the Posts and Telegraphs who are primarily Government servants but who are also workmen within the meaning of the Industrial Disputes Act. We thought they should also have the benefit of this Tribunal which is intended to give them speedy and effective justice. But let me make it clear, we are not taking away their rights under the Industrial Disputes Act. If a Government servant who is also a workman today desires to go under the Industrial Disputes

Act, he may do so. He may seek a reference under section 10 read with section 2A of the Industrial Disputes Act. He may go to a Labour Court and he may go to an Industrial Tribunal. What we are now providing is an additional forum which we believe is available to him as of right without the intervention of the State Government or the Central Government and which will secure him quick and effective justice.

We also found that some States may not be in a position to set up their own State Tribunals because, as the States are small, the number of cases are small; it may not be fruitful for them to set up an independent Tribunal and bear the cost. Article 323A enables us to do so and what we have done now is, with the consent of the State Government, if they so want it, a Bench of the Central Administrative Tribunal could also be designated as the State Administrative Tribunal. That is to say, the Members would be common to both the Tribunals. That provision has been made. We have taken the opportunity to bring forward some purely clarificatory amendments. For example, the question was raised in a case whether a Union Territory fell within the scope of this Act. So, we have clarified it to mean that Union would also mean to include a Union Territory.

Certain other questions have arisen, whether the location of the Bench at New Bombay was valid. So, we have taken the opportunity to make it clear that the Bench could be located at New Bombay.

These are broadly the scope of the amendments that we are bringing to the Act. Since the Act has been debated at a great length in this House as well as in the Lok Sabha, and has been broadly approved, and the Act was introduced to meet a felt need, I do not think there can be much controversy about the amendments that we are bringing forward now. Sir, I commend the Bill to amend the Administrative Tribunals Act, 1985 to be taken into consideration and adoption by this House.

The questions were proposed.

SHRI P. BABUL REDDY (Andhra Pradesh): Sir, the amendments proposed in this Bill do not admit much of controversy. But the very necessity for bringing this Bill justifies the criticism made on the earlier occasion when the Bill was brought before Parliament. Sir, the Bill was originally moved in the Lok Sabha on 29th January, 1985. Then it came to Rajya Sabha. It was discussed on 31-1-85. The President's assent was given on 27th February, 1985. But though the Bill was rushed through in both the Houses and the assent was obtained in February, 1985, even the Chairman's appointment was not made till October, 1985, The Chairman was appointed in October, 1985, that is, eight months afterwards. Why I am referring to these dates is that at the time when this matter came up these dates is that at the time when this matter came up before Rajya Sabha on the earlier occasion, it was suggested by Mr. Sukomal Sen and another hon. Member, Mr. Ramakrishnan, that a Bill like this, a very important Bill which seeks to transfer about 68,000 cases from various High Courts to these Tribunals, a Bill affecting about 80 to 90 lakh persons, should not be hurried through, but should be discussed thoroughly. And, in fact, my friend, Mr. Ramakrishnan moved a motion to refer the matter to a Select Committee. But the Government did not pay heed to that wise suggestion. It was rushed through. But, Sir, what is the result? The original Bill was passed, it became an Act on February, 1985. The original Act contained 37 sections. The Amending Bill now has 26 clauses. So, this is the result of the hurried legislation which was very properly criticised by the Members on this side asking not to push through in such a hurry.

Now, Sir, there are three objects in this Bill. One is to keep the jurisdiction of the Supreme Court in tact because the original Act, if it was an Act which was sound, which was constitutionally valid, took away the jurisdiction of the Supreme Court under article 32 of the Constitution of India. Of course, if the matter was referred to the Select Committee at the stage of the original Bill itself, that Committee at the stage of the

[Shri P. Babul Reddy]

original Bill itself, that feature would not have been retained because no power on earth can take away the power of the Supreme Court under article 32. It has been referred to by the Supreme Court and by Dr. Ambedkar also, if I remember aright, in the Constitutent Assembly, that article 32 is the soul of the Constitution because article 32 is one of the Fundamental Rights. What is that Right? To enforce the other Fundamental Rights. The right to enforec the Fundamental Rights is itself a Fundamental Right. That is why, Dr. Ambedkar has very rightly characterised it as the soul of the Constitution. If it is the soul of the Constitution, then it is a basic feature of the Constitution. That cannot be tampered with by the Parliament. Now, it is specifically said in the Objects that jurisdiction of Article 32 was sought to be taken away. Now we are restoring it. But, unfortunately this provision is not merely made in this Act itself. This Act merely copied what is said in the Constitution i.e. Article 323. So, this vice goes to the very amendment in the Constitution. That vice does not stop with the Act which we made earlier. That vice, spreads and creeps in the Amendment. It originates in the amendment of the Constitution itself. In the original amendment of the Constitution itself the power is given to the Parliament to take away the power under Article 32. So, very rightly the hon. Minister has now come forward with this wise move, because now the necessity to put that amendment to question in the Supreme Court may not arise with this amendment more so when these amendments are made with retroactive operation.

The second object is to introduce the administrative and Judicial member's concept. This is also to steer clear the Constitutional objection, if I may say so. The Minister did not touch that. The judicial power of the State is mainly in the highest courts in this land. One is the Supreme Court; another is a high court. That judicial power, no doubt can be taken away from these courts, but only to substitute another judicial power. If you entrust this judicial power to an administrative authority, that would tamper with the judicial power of the State. That would immediately attract the vice of Constitutionality. That is why the Supreme Court while incorporating certain conditions in the stay petition said and one of the things the Supreme Court required was that the Amendment should be introduced to have at least one judicial member as a member in the tribunal so that it would be trusted a judicial tribunal, so that it could be said that the power is not given to an administrative tribunal, but to a judicial tribunal. A number of amendments are consequent to this amendment *viz.* having one judicial member and another administrative member in the bench.

The third object of the Bill is society. There are number of societies owned and controlled by the Central Government. While staff of the corporations owned by the Central Government or controlled by the Central Government or local authorities come under the jurisdiction of the tribunal, the staff of the societies do not come. It is that lacuna also that this Bill seeks ot remove. Therefore, I may say that it is a wholesome amendment.

With regard to the other aspect of extending the jurisdiction of the tribunal to persons covered by the industrial Disputes Act, I have got a submission to make. Once you bring it under the special tribunals, you must take away the jurisdiction of the Labour Courts to that extent. After all, once the High Court power is transferred, the High Court's jurisdiction is taken away. Similarly, if some court's power is transferred, that court's jurisdiction is taken away. Otherwise it would introduce a very serious situation. The hon. Minister in his opening remarks while introducing the bill said that the jurisdiction of the court under the Industrial Disputes Act is still retained. Firstly, that is not permissible. Secondly it would introduce a very serious defect in the Act. You know the employees of the Central Government are there throughout the

country. Some people governed by the same situation go to the labour courts and some people go to tribunals which exercise the jurisdiction of the High Courts also. The tribunal which is a higher authority at any rate than the labour courts decides one way. The labour court decides another way. In the same situation, if not the same set of people, but the same category of people, go to the labour court and another set of person of the same category go to the tribunal which is exercising the jurisdiction of the High Court, it could lead to conflict. This is not permissible in my humble opinion. It is neither feasible nor practicable. So, the Minister should give a second thought to this point. Other provisions are for clarification. Sir, the first attempt made in the country to set up Tribunal was the Andhra Pradesh State. Just as the linguistic States started with the Andhra Pradesh, this Administrative Tribunal also started with the Andhra Pradesh. Unfortunately under article 371D...(*Time bell rings*). Please give me two more minutes because there are not many speakers. Sir, article 371D also consists of some wrong amendments in the Constitution. Having created a Tribunal vesting with the jurisdiction of the High Courts, then, it is left to the sweet will of the Government to set aside the Tribunal order. Sir, Government is a party before the Tribunal. Then, within three months they can overrule the order of the Tribunal. That gave rise to thousands of writ petitions and a few hundreds of writ petitions are pending in the Supreme Court also questioning having taken away the power of the High Court and vested it in the Tribunal, how can you empower of the Government who is a party before the Tribunal? Now, why I am pointing out this is because under article 323A there is a provision to modify any presidential order or any order made earlier. But unfortunately this particular Bill also does not touch that aspect. But once the Tribunal to override the order of Tribunal are created the cases under the Andhra Pradesh Tribunal would be transferred under the provisions of the Act itself. So that Tribunal should be abolished, as early as possible and the Tribunals under this Act must come to play. The unfortunate situation of the executive which is a party and which suffered a decree should able to override and set aside the decree, should be put to an end as early as possible.

Sir, with these words, I thank you for the opportunity given to me.

SHRI P. N. SUKUL (Uttar Pradesh): Mr. Vice-Chairman, Sir I rise to support this simple Bill which broadly speaking has been brought forward just to replace the earlier Ordinance issued by the President on the subject. Besides the Ordinance, there are certain consequential amendments and some other few amendments also. But that is not very important. As the Minister said that we have had a very lengthy discussion on this subject when we passed this Tribunal Bill, I need not go into the history of it. But I must mention that it was in the year 1975 for the first time the Swaran Singh Committeee recommended that instead of overburdening the courts, some special type of Tribunals should be created to deal with service matters of Government servants or public employees. It was as a sequel to that in 1976 through the 42nd amendment, the Government was empowered to appoint such Tribunals by amending the article 323. Under article 323B of the Constitution these Tribunals had been formed. Now, as the Honourable Minister said that certain lacunae were discovered subsequently and also the Supreme Court gave certain suggestions, for all purposes the Supreme Court suggestions are to be taken as directions. So in accordance with the directions of the Supreme Court, certain things had to be incorporated and that too with retrospective effect, because the Tribunals had already came into existence and had been functioning. So there was going to be some sort of dualism wherein certain petitions were pending before the Tribunals as well as before the High Court and Supreme Court. So it all necessitated an amendment and since the Parliament was not in Session at that time, it was the president who had to promulgate an Ordinance to give effect to the directives of the Supreme

[Shri P. N. Sukul]

Court and meet the need of the time squarely. Now, the Parliament is in session, that is why this Bill has been brought forward for our consideration. Now, coming to the modifications in the original Act contemplated in this Bill, well, as regards clause 3, giving retrospective effect to the Tribunals, there cannot be any objection because the Tribunals came into existence on the 1st November, 1985, and they had started functioning. And as I said, in order to do away with any probable dualism that might have arisen, this amendment has been made. So it is perfectly in order.

I now come to clause 5 of this Bill which seeks to amend section 4 of the original Act. Here a new sub-section is being inserted. The new sub-section (5) says:

"Notwithstanding anything contained in the foregoing provisions of this section or sub-section (1) of section 5, the Central Government may,——

(a) with the concurrence of any State Government, designate, by notification, all or any of the Members of the Bench or Benches of the State Administrative Tribunal established for that State..."

It means that it is only with the concurrence of the State Government concerned that one or all the Members of a Bench meant for that State will be designated. Now, as I have been able to study it, "all members" means that Judicial Member and also the Administrative Member. "One or all Members" means that he may be a Judicial Member or he may be an Administrative Member. And for his designation, the concurrence of the State Government is required; it is a "must". But under clause 7(e) of this very Bill, a Judicial Member cannot be appointed without the prior approval of the Supreme Court. How you can reconcile these two things, I do not know. Clause 7(e) says:

"No appointment of a person possessing the qualifications specified in sub-section (3) as the Chairman, a Vice-Chairman or a Judicial Member shall be made except after consultation with the Chief Justice of India."

On the one hand, you consult the Chief Justice of India. On the other, you say that you will not do it without the concurrence of the State Government. How are you giving to a reconcile these two things? To my mind, it gives rise to a sort of paradox and somehow this paradox has to be resolved.

Shri Kailashpati Mishra, who was the first to speak, said that there was no indication as to where these Benches or Tribunals would be established. The Minister did not point this out but on page 4 of the Bill, in section 6(g)(7), it is indicated as to where these Tribunals or their Benches will be established. It says:

"Subject to the other provisions of this Act, the Benches of the Central Administrative Tribunal shall ordinarily sit at New Delhi (which shall be known as the principal Bench), Allahabad, Calcutta, Madras, New Bombay and at such other places as the Central Government may, by notification, specify."

So certain places are already given in the Bill and it is open to the Government to have these Benches at some other places also if there is need for it. So the objection which Mr. Mishra had raised in the beginning was not very pertinent.

Now, I come to clause 7 which amends section 6(3) of the Act. Here as regards an Administrative Member, it has been mentioned that he may be an Additional Secretary who has held that post or a post carrying the same pay scale for two years; or he may be a Joint Secretary who has held that post or an equivalent post for three years. Or he may be a Joint Secretary who has served for three years, or on a post equivalent to that carrying the same pay scale. What is all this? Why cannot he be a Additional Secretary with five years' experience or two years' experience or three years' experience? Then tomorrow you will say he may be a Deputy Secretary with five

years and an Under Secretary with eleven years' experience. This kind of things sohuld not have been there. It does not go to the credit of the Government. In having such arrangements you should be very specific, you should be very particular. For me there is no difference, whether he is a Joint Secretary or an Additional Secretary. But making such provisions one after the other, it leaves lots of doubts in the minds of the people, of the employees, for whom you are making these tribunals. I do not want to go into the details. This institution of tribunals we have inherited from the British people. There also they have tribunals. Where they want to offload the courts in dealing with certain matters, they appoint tribunals—industrial tribunals, rent control tribunals or public service tribunals. These tribunals are, in fact, quasi-judicial bodies. They are not wholly judicial bodies. That is why in England where these tribunals are there, they have a Council on Tribunals. They have tribunals and also they have a Council of Tribunals to keep under review the constitution as well as the functioning of these tribunals. If you are going to establish tribunals in your country, then you must have on that pattern a Council on Tribunals so that the functioning of these tribunals that you are going to appoint must also be kept under proper review and from time to time they are checked and reviewed, and if anything wrong is found, that wrong must be corrected. Our Central Administrative Tribunal came into existence only last year, in 1985, but much earlier than that there had been public service tribunals in so many States. My own State of Uttar Pradesh was the first to appoint a tribunal in 1975. Then in Rajasthan there was a tribunal. In Andhra Pradesh there was a tribunal. There were already so many tribunals in so many States before you, the Government of India, decided to have a Central Administrative Tribunal. But my experience of the tribunal in U.P. is not very happy. When the tribunals were set up, I was the president of the U.P. Government Employees' Federation and also the president of the All India Employees' Federation. So I am fully aware of the handicaps there. The worst thing about these tribunals is that they do not issue any injunctions. When we were having a detailed discussion on the subject last year, there too I mentioned it. A court can issue an injunction but a tribunal cannot issue an injunction. Now, if some injustice is going to be perpetrated on somebody in the service, how are you going to check it? And once an appointment has been made, once an injustice has been perpetrated, then it will be very difficult to undo it.

* * *
* * *
* * *

For appeals they can go to the Supreme Court. But once you appoint the Tribunals for such injusticss, of course, they have to approach these Tribunals only and if the Tribunal does not have the power to pass an injunction or grant a stay of something, then, you see, the major part of the justice that might have accrued to the person concerned would now be denied to him and that person is going to be deprived of it. So, my suggestion is that if ultimately you are going to amend it and make it more comprehensive, then you must also make a provision in the Bill for the issuance of stay orders and injunctions wherever there is a need for these things.

Then, Sir, the second thing that I was mentioning was that these Tribunals do not cover the staff of the Parliament Secretariats, that is, the Rajya Sabha staff, the Lok Sabha staff, and also the staff of the Supreme Court.

***Expunged as ordered by the Chair.

SHRI PARVATHANENI UPENDRA: Why?

SHRI P. N. SUKUL: Because they are not covered by it. You have already passed it and you have made it into a law. The Tribunals are there. But they do not cover these people. For example, I may mention one thing. In the Rajya Sabha and the Lok Sabha, what happens? Not that they are not Government employees; not that they do not face injustices; not that they should not be given justice; not that they should not be extended justice. But then how are you going to do in the case of such employees who are not covered under this Act? You see by article 98 of the Constitution the recruitment and service conditions of the parliament staff are governed. Article 98 (2) provides that there should be a specific law for dealing with cases relating to the service matters of the Rajya Sabha and the Lok Sabha employees. But that law has not been made as yet in spite of the lapse of 35 years or more. Thirty-eight years have elapsed since our Independence and yet that law has not been made. Only under article 92(3) of the Constitution there is a provision for making rules and these rules were made in 1957 and still the Rajya Sabha and the Lok Sabha staff are being managed by those very rules. What happens then? Day in and day out there are supersessions. People's seniority is affected. I know of so many cases where this has happened and the Chairman cannot know everything. What I mean to say is that there should be a permanent body for these people also who are deprived of the facility of these Tribunals. I would suggest that a permanent committee should be formed, if a Tribunal cannot be appointed for the staff of Parliament, a permanent committee consisting of Members of Parliament, both the Secretary-Generals, and a few officers, as the case may be, and this committee should look into the grievances of the employees and the officers of the Rajya Sabha and the Lok Sabha. Similarly, a committee can be formed for the Supreme Court staff also in the Supreme Court. The purpose is that the same justice should be ensured for all concerned. And, Sir, if you are not going to do it, then how are you going to solve the whole problem? You see. I was talking of the Rajya Sabha. You see, up to 1984, there was a Pay and Accounts Office. I was told, you see, that the office of the PAO and the general administration were merged and, consequent on this merger, the seniorities were disturbed and so many young people superseded so many old or senior people. we are sitting here, all of us in this House, in this august House. to do some justice, social and economic justice, and if we cannot ensure justice in the case of our own employees who serve us, then what are we here for? Then it is all reduced to a show of circus. We come here and we are indulging in so many exercises and we are not ultimately able to do anything for the people who want justice and we are not able to help them. So, I say that even in the case of such categories of people or employees or officers, some *via media* should be found and, if not a Tribunal, at least some other body should be constituted. Also, Sir, as I mentioned earlier, certain Tribunals were already there in Rajasthan, in Andahra Pradesh and Uttar Pradesh. Now, on the pattern of the present Administrative Tribunals that we are considering here, on the same pattern, appointments of Members should be made there also. There should be a judicial member and an administrative member. And the Government also try to see that where such tribunals already exist, there too, proper reforms are introduced so that these tribunals can act in a just way.

As I said, in the end I will again say that if you are going to have the tribunal. then the Council on Tribunals must have a proper check on these tribunals to review the working of these tribunals, otherwise if these tribunals perpetrate injustices ... (*Time Bell rings*) Since it is an administrative matter, the appointment of tribunals is a part of the administration more than a part of the judicial system. That is why there has to be some administrative solution to the problem. and for that solution I would suggest that on the pattern obtaining in England there must be a Council for making a periodical review of the tribunals.

[Shri P. N. Sukul]

With these words, I support the Bill.

THE VICE-CHAIRMAN (SHRI M. P. KAUSHIK): Mr. S. P. Mitra.

SHRI SANKAR PRASAD MITRA (West Bengal): Mr. Vice-Chairman, Sir, this amending Bill appears to me to be an *ad hoc* measure. This has been brought on the basis of an interim order passed by the Supreme Court in Sampat Kumar's case. The interim order was passed without full arguments on the merits of the case which will be taken into consideration later. And when the final judgement of the Supreme Court is delivered, it is possible that further changes in this Act may have to be made. Article 323A(1) of the Constitution confers power on Parliament to make laws relating to the setting up of administrative tribunals concerning the service conditions of Central Government employees and of the employees of corporations owned or controlled by the Central Government. And sub-article (2) of Article 323A, clause (d), specifically provides that when Parliament enacts a law for setting up administrative tribunals, Parliament has the right to exclude the jurisdiction of all courts, including the Supreme Court, except the jurisdiction of the Supreme Court under Article 136, with respect to disputes or complaints referred to in clause (1). Therefore, whether or not Article 32 would ultimately stand in the way is still a doubtful proposition. To meet the requirements of the interim order it is proposed that powers under Article 32 would be exercisable even now. But Article 226 powers of High Courts have been taken away. One can appreciate the difference between Art. 32 and Art. 226, becauss Art. 32 is confined to enforcement of Fundamental Rights only and Art. 226 speaks not only of fundamental rights but other purposes as well. The Supreme Court wanted that the Judicial Member should be appointed in consultation with the Chief Justice of India. My hon. friend, Mr. Sukul, was thinking of concurrence. But the word 'concurrence' has not been used in this interim order. If it is a question of consultation, the Supreme Court itself has said that consultation means obtaining the opinion of the Chief Justice which may or may not be acceptable to the Government. Therefore, I do not see much difficulty in this respect.

Another point has been raised as regards the conflict of jurisdiction between Courts under the Industrial Disputes Act and Administrative Tribunals. Two judgements delivered by two different authorities on the same set of facts may differ. But that was the position even before this law came into operation because the remedy under Article 226 or 136 was open. Taking all these facts into consideration, it seems to me that this has been a proper amending Act just to meet the requirements of the interim order. But I repeat that efforts should be made on the part of the Government to have this matter finally disposed of as early as possible because as I have already stated, the final judgement may be somewhat entirely different from the interim order which has been passed. So far as my information goes, the purpose of setting up the Administrative Tribunals has already been sufficiently justified by the working of these Tribunals at the Centre and in certain other States. The whole idea was to relieve the High Courts of the burden of applications under Article 226 of the Constitution. In all High Courts in India, large number of service applications under Article 226 are pending and pending for years and their disposal may take place after the retirement of the person concerned. Now, these Tribunals have been set up for quicker disposals and as far as I am aware, the President of the Tribunal is a retired Chief Justice of the Bombay High Court and the other Judicial Members in the different States who have been appointed are retired Judges of the different High Courts. If that be the case, it is my hope and belief that these Tribunals will function, in future, as satisfactorily as the Income Tax Appellate Tribunals in different parts of the country. I, therefore, urge upon the Government to see that the case before he Supreme Court is disposed of expeditiously so that a final shape can be given to the Administrative Tribunals Act.

SHRI MADAN BHATIA (Nominated): Mr. Vice- Chairman, Sir, I do rise to support this Amendment Bill because it is a step in advance on the existing Act. But I would like to share my apprehensions with the hon. Members in this House that I am still not sure whether in spite of these amendments, the challenge of this Bill, after it has become an Act and incorporated in the existing Act, would be frustrated in the courts. Sir, before I elaborate my submission, I would like to deal with one point which has been raised by Mr. Sukul, *viz.* that the Tribunals should be given the power to pass temporary injunction orders. But that provision is already there. There is Section 24 in the existing Act which gives the power to the existing Tribunals to make interim orders.

SHRI P. N. SUKUL: Interim orders or stay orders?

SHRI MADAN BHATIA: Interim orders will cover all injunctions or stay orders. And they are being granted.

Sir, there are two particular aspects of this Bill on which I would like to share my thoughts with the hon. Members. One is the restoration of the jurisdiction of the Supreme Court under article 32 of the Constitution.

SHRI P. N. SUKUL: Just a minute. I have referred on the basis of my experience in the State. There in UP, it is not granted. I had mentioned that.

THE VICE-CHAIRMAN (M. P. KAUSHIK): Why explain it? Please carry on.

SHRI MADAN BHATIA: The other is with regard to the composition of these Tribunals. When this Bill was being discussed in one of the last sessions, I had expressed my thoughts that although the provisions have been made in this Bill for appointment of members of bureaucracy to these Tribunals, I hoped that members of bureacuracy would never be appointed to these Tribunals. The reason that I expressed was that service law has become a very complicated branch of the Constitutional Law. It requires the range and the breadth of vision of the developing Constitutional rights of the citizens. This has also involved the impact of the judicial sense of justice and fair play on the Constitutional rights of the Government servants under article 14 and article 21 of the Constitution. And unless a Member of the Tribunal is one who has had a judicial background, a judicial training, who has a full comprehension of the development of Constitutional Law, of the range and the breadth of vision of the Constitutional rights of the Government servants, he would not be able to do justice to the matters which are brought before him. For the second time, when the Report of the Union Public Service Commission was being considered, I in terms said from the floor of this hon. House that the judiciary is against the appointment of members of bureaucracy to these Tribunals, the members of the Bar are against it, the Government servants are against it. And, therefore, the spirit of consensus which is vibrating and which is becoming the bedrock of the present Government is against the appointment of members of bureaucracy to these Tribunals. "And if I repeat, I said." For God's sake, don't appoint the members of bureaucracy to these Tribunals. But, unfortunately, this is exactly what happened or what was apprehended to happen. And this particular Act became the subject matter of challenge in the Supreme Court. And the objection which the Supreme Court raised was, as the hon. Minister has rightly pointed out, to the composition of these Tribunals. In the interim order, the Supreme Court has said that at least one Member must be a judicial member, namely that he must have the judicial background. But this is only an interim order. But if we go to this particular Act after taking the amendments into consideration, what is the picture which emerges before us? The picture is that the Chairman can still be the Secretary to the Government of India. The Judicial Member, he may be a Judge of a High Court, or mny be qualified to be a Judge of a High Court, or he may also belong to the Indian Legal Service. In other words, he can also be a Member of bureaucracy in the Ministry of Law. And,

the third, again, is Administrative Member. He can be the Additional Secretary, he can be the Joint Secretary. The provisions of the Bill, as they are, can lead to the constitution or the composition of a tribunal, all the three members of which may be members of bureaucracy. I respectfully submit, Sir, does this meet with the requirement of the basic feature of the Constitution, namely, the right of judicial review? As far back as Indira Gandhi's election case, the Supreme Court said that judicial review is a part of the basic structure of the Constitution which cannot be touched even by Parliament. And this matter again came up for consideration in the Minerva Mills case. The hon. Member referred to the speech which was made by Mr. Ambedkar. That speech was referred to by hon. Mr. Justice Bhagwati in the Minerva Mills case and I would like to read the relevant paragraph from the Minerva Mills case. (Time bell rings). Can I have a few more minutes, Sir?

SHRI R. MOHANARANGAM (Tamil Nadu): Let him have, Sir.

SHRI MADAN BHATIA: Dr. Ambedkar, the principal architect of our Constitution said in the Constituent Assembly on 9th December, 1948: "If I was asked to name any particular article in this Constitution as the most important, an article without which this Constitution would be a nullity, I would not refer to any other article except this one. It is the very soul of the Constitution and very heart of it. And, I am glad that the House has noted its importance." Then, Mr. Justice Bhagwati goes on to say: "The power of judicial review is an integral part of our constitutional system and without it there will be no Government of laws and the rule of law would become a teasing illusion and a promise of nullity. I am of the view that if there is one feature of our Constitution which more than any other is basic and fundamental to the maintenance of democracy and the rule of law it is the power of judicial review and it is unquestionably, to my mind, part of the basic structure of the Constitution. Of course—now these are important lines—now when I say this, I should not be taken to suggest that effective alternative institutional mechanisms or arrangements for judicial review cannot be made by Parliament. But what I wish to emphasise is that judicial review is a vital principle of our Constitution." Mr. Justice Bhagwati after referring to the speech of Mr. Ambedkar held that judicial review is the basic feature of the Constitution. Mr. Justice Bhagwati also said that he should not be taken to mean that there cannot be effective alternative mechanisms or arrangement for judicial review in place of article 32 of the Constitution. I respectfully submit, Sir, that what are we going to do with this amendment? Article 32 is being restored, no doubt. But article 226 has been wiped out and article 32 has only limited application where fundamental rights are involved.

5 P.M. Where a Government servant is dismissed, no fundamental right is involved or he is reduced in rank, no fundamental right is involved. Then article 32 also can be invoked at the discretion of the Supreme Court. The Supreme Court can still say that we shall not entertain your petition: you first try your luck and better avail yourself of the alternative remedy before the Tribunal. Therefore, the basic question is whether the Tribunals which we are constituting under this Act, with these amendments, meet the requirement of an effective alternative mechanism of a judicial review I respectfully submit that although this bill is an improvement on the existing Act—and I fully support it—it does not fully meet the requirement of the Constitution for the simple reason that the Government may, in practice, appoint all the three members from the judiciary; but the Act gives the power to the Government to appoint all the

[Shri Madan Bhatia]

three members from bureaucracy, and that would mean the power of judicial review is being vested in the hands of the individuals who are not competent to perform the function of judicial review. This is not an effective alternative arrangement. I, therefore, respectfully submit that I want to share my views and apprehensions with the hon. Minister present that in spite of this change which has been brought about by this amendment Bill, this amended Act may still not be above challenge before the Supreme Court.

Number two: The jurisdiction of the Supreme Court is being restored under article 32 of the Constitution. As has been pointed out by the hon. Member on this side, that is a question of far-reaching importance, as to why we are restoring the jurisdiction of the Supreme Court under article 32 of the Constitution. Is it because we apprehend that article 23(A) in so far as it provides that jurisdiction of the Supreme Court can also be taken away, is ultra-vires the powers of Parliament to amend the Constitution? If that is the reason, then I respectfully submit that this restoration back of the power of the Supreme Court under article 32 by this amendment is conceding a principle of far-reaching Constitutional importance. We know that, since 1973, we have been fighting a particular battle, namely, the sovereignty of the people vis-a-vis the Constiution, whether the Parliament has got the power to amend any and every feature of the Constitution or not, whether the Constitution has some basic structure which is beyond the touch of even the Parliament and the representatives of the people or not. It is the Kesavananda Bharti Case in which it was held, this theory was adumberated and enunciated that there is a basic structure of the Constitution which even the Parliament cannot amend. That concept is hanging around the neck of Parliament and the people of this country like albatross and we think we have to join the battle. Is it that the people of this country, their representatives in Parliament, cannot decide what is good for the people so far as the Constitutional amendments are concerned? Is it that only the judiciary can decide whether a particular amendment is within the power of Parliament or not? This is a question which has not arisen only in India; this was a question which confronted the United States in the late 9th century when the Constitution of United States was formed, and I would like to read the words which were written by Robert Yates in what are known as Letters of Brutus. It says:

> "The Constitution is a compact of a people with their rulers; if the rulers break the compact, the people have a right and ought to remove them and do themselves justice; but in order to enable them to do this, with the greater facility, those whom the people choose at stated periods, should have the powers, in the last resort, to determine the sense of the compact; if that determination is contrary to the understanding of the people, an appeal will lie to the people at the period when the rulers are to be elected; and they will have it in their power to remedy the evil; but if this power is lodged in the hands of the men, independent of the people"...

namely, the judiciary—

> ...and of their representatives who are not, constitutionally, accountable for their opinions, no way is left to control them, but with a high hand and an outstretched arm."

I would respectfully submit, Sir, the question is, Parliament seeks to amend the Constitution and introduces article 323A in the Constitution. Parliament, in its wisdom, decided that if an administrative tribunal is constituted, then, the jurisdiction of the Supreme Court and the High Courts, under article 32 and article 226 respectively

may be taken away. This was not an ordinary law. This was an amendment of the Constitution. This raises the question, because this amendment is being brought in, is it our case that article 323A, which was introduced by Parliament by amending the Constitution was beyond the power of Parliament?

SHRI SANKAR PRASAD MITRA: This is also a part of the Constitution.

SHRI MADAN BHATIA: This is a part of the Constitution. Parliament has amended the Constitution. Are we surrendering the right of Parliament and the people to amend any provision of the Constitution? I respectfully submit, Sir, that we are surrendering that right without joining the legal battle. One day, we have to join the battle. It may be that so far as this Bill is concerned and so far as the present time is concerned, the time is not right for the battle. But we may not like to join the battle because the time is wrong and the cause is wrong. But the way things are developing in this country, we may have to think of far-reaching constitutional amendments. If not today, in five years, in ten years, or in three years or in fifteen years. This was the time when we would have joined the battle. May be, in the opinion of the Government, this is not the right time and this is not the right cause, to join issue. On this, I have no quarrel. But I would like to place on the record of this hon. House that this Albatross which was put around the neck of the people, the sovereignty of the people, the Parliament, that they cannot amend certain provisions of the Constitution, and it is only the judiciary, which is not responsible to the people, which will decide whether Parliament can put in this amendment in the Constitution or not, is something which we have to get rid of. If not today, tomorrow, a year hence or five years hence.

Thank you.

श्री सत्य प्रकाश मालवीय (उत्तर प्रदेश) : मान्यवर, इस संशोधन विधेयक के सम्बन्ध में मेरे मन में कुछ शंका है और केवल उसी शंका की ओर मैं अपने विचारों को सीमित रखूंगा। यह प्रशासनिक अधिकरण विधेयक लोक सभा द्वारा 29 जनवरी, 1985 को पारित किया गया और उसके बाद राज्य सभा द्वारा 31 जनवरी, 1985 को पारित किया गया और फरवरी, 1985 में यह अधिनियम बन गया। जिस समय इस विधेयक पर लोक सभा और राज्य सभा में विचार-विमर्श हो रहा था और दोनों सदनों के माननीय सदस्य अपने विचारों को प्रकट कर रहे थे उनमें से सत्ता पक्ष और विपक्ष दोनों प्रकार के सदस्यों ने सरकार से इस बात का आग्रह किया था बहुत जल्दी में यह विधेयक लाया गया है और इस विधेयक की जो मंशा है उसको पूरा करने के लिए किसी जल्दबाजी की जरूरत नहीं है और बहुत से संशोधनों के संबंध में अपने सुझाव देते हुए कुछ सदस्यों ने यह भी सुझाव दिया था कि उस विधेयक को प्रवर समिति से सुपुर्द कर दिया जाये और उस वक्त भी लोगों ने यह शंका व्यक्त की थी कि यह इस प्रकार का विधेयक है कि यदि इसी प्रकार से पारित कर दिया जायेगा तो उच्च न्यायालय या सर्वोच्च न्यायालय में इसकी वैधता को चुनौती दी जायेगी लेकिन यह विधेयक प्रवर समिति को नहीं सौंपा गया और उसके फलस्वरूप एक साल भर भी नहीं बीता है कि आज उस विधेयक के संबंध में एक बहुत ही विस्तृत संशोधित विधेयक प्रस्तुत किया जा रहा है : मान्यवर, उच्च न्यायालय और सर्वोच्च न्यायालय में इसकी वैधता को चुनौती दी गयी और तब चुनौती दी गयी जब केन्द्रीय प्रशासनिक अधिकरण पाँच न्याय पीठों का बन नहीं पाया और उस सिलसिले में जब मुकदमा चल रहा था तो सर्वोच्च न्यायालय के समक्ष सरकार की ओर से एक अंडरटेकिंग दी गयी जिसका विवरण "उद्देश्यों और कारणों का कथन" में दिया गया है कि उच्चतम न्यायालय को यह परिवचन दिया गया था कि अधिनियम में यथोचित संशोधन वाला विधेयक यथासंभव शीघ्र संसद के

[श्री सत्यप्रकाश मालवीय]

समक्ष रखा जायेगा। माननीय कैलाशपति मिश्र जी ने अध्यादेश के निरनुमोदन के संबंध में जो संकल्प रखा है उसमें इस संबंध में उन्होंने अपने विचार रखे हैं। तो मेरे मन में एक शंका है जो मैं पूछना चाहता हूं कि सर्वोच्च न्यायालय के समक्ष सरकार की ओर से इस बात का परिवचन दिया गया था कि संसद के समक्ष इस संबंध में एक विधेयक लाया जायेगा, उन संशोधनों को लाने के लिए जिनके सम्बंध में सर्वोच्च न्यायालय ने अपनी राय व्यक्त की थी तो यह कहां तक न्याय संगत या युक्तिसंगत है सरकार के लिए कि जब संसद का अधिवेशन बुला लिया गया था तो उसके ठीक पहले अध्यादेश लाने की क्या जरूरत थी। मेरी अपनी राय में सुप्रीम कोर्ट के समक्ष जो वचन सरकार की ओर से दिया गया था, अध्यादेश को लाकर सरकार ने उस वचन को भंग किया है और सरकार को ऐसा नहीं करना चाहिए था।

दूसरी एक बात की ओर मैं आपका ध्यान आकर्षित करना चाहता हूं और इस संबंध में माननीय सदस्यों ने अपने विचार व्यक्त किये थे पिछली बार जब यह विधेयक प्रस्तुत किया गया था तब भी उन्होंने विचार व्यक्ति किये थे संविधान में लोगों को जो मौलिक अधिकार है चाहे सर्वोच्च न्यायालय के संबंध में अनुच्छेद 32 हो या उच्च न्यायालय के संबंध में अनुच्छेद 226 है, इसको ले करके। अनुच्छेद 32 के संबंध में तो वर्तमान संशोधन में इस बात का प्रावधान किया गया है और जिसके लिए इस बात को इसमें कहा गया है कि "संविधान के अनुच्छेद 32 के अधीन सेवा संबंधी विषयों के संबंध में उच्चतम न्यायालय की अधिकारिता बनाए रखी गयी। मूल अधिनियम का आशय अधिकरण को इस अधिकारिता को प्रदान करना भी था।" यह सफाई, यह स्पष्टीकरण अगर उस समय लिया जाता तो सरकार को यह नहीं करना पड़ता। मैं पूछना चाहता हूं कि जो संविधान का अनुच्छेद 226 है उसके संबंध में सरकार की ओर से क्या गारंटी है या क्या आश्वासन दिया जा रहा है क्यों इस संशोधन में केवल अनुच्छेद 32 का जिक्र किया गया है जो कि सर्वोच्च न्यायालय के संबंध में है लेकिन अनुच्छेद 226 का जिक्र क्यों नहीं किया गया है। हालांकि यह बात तय है कि ये संविधान के प्रदत्त अधिकार हैं चाहे अनुच्छेद 226 हो या अनुच्छेद 32। किसी भी अधिनियम से या किसी भी कानून को लाकर न्यायालय के इन अधिकारों को छीना नहीं जा सकता है। इस संबंध में मैं सरकार से चाहूंगा कि मंत्री जी अपना उत्तर दें तो इस विषय में अपना स्पष्टीकरण देने का प्रयास करें।

जितने भी सरकारी कर्मचारी हैं जिस ओर अभी ध्यान आकर्षित किया गया कि संविधान के अनुच्छेद 323 ए में इस बात की व्याख्या की गयी है कि जो केन्द्रीय सरकार के कर्मचारी हैं, राज्य सरकार के कर्मचारी हैं या स्थानीय निकाय के कर्मचारी हैं उनकी सेवा शर्तों के संबंध में सरकार की ओर से संवैधानिक व्यवस्था की जायेगी और उसी के अनुरूप 323ए को लागू करने के लिए यह विधेयक लाया गया और आज संशोधन लाया गया है। लेकिन जितने भी सरकारी कर्मचारी हैं वे जब सरकारी अफसरों या उच्च नौकरशाहों के उत्पीड़न के शिकार होते हैं तभी न्यायालय की शरण लेते हैं तो इस बात का इस कानून में क्यों प्रावधान किया गया है कि जो बड़े बड़े नौकरशाह बैठे हुए हैं डिपार्टमेंट में सेक्रेट्री, सचिव स्तर के या इस प्रकार के और अधिकारी उनको इस अधिकरण का सदस्य बनाया जायेगा। इसलिए मेरा सुझाव है कि इसमें केवल न्यायिक सेवा के लोगों को रखा जाये, ऐसे लोगों को रखा जाये जो न्यायिक सेवा में रहे हों लेकिन जो सेक्रेट्री या ज्वाइंट सेक्रेट्री हैं जिनके उत्पीड़न के कारण ही सरकारी कर्मचारियों को न्यायालय की शरण लेनी पड़ती है इस अधिकरण की शरण लेनी पड़ेगी उनको इस अधिकरण का सदस्य नहीं बनाना चाहिए।

इन्हीं शब्दों के साथ मैं मिश्र जी का जो निरनुमोदन प्रस्ताव है उसका मैं अनुमोदन करता हूं।

SHRI PARVATHANENI UPENDRA (Andhra Pradesh): Mr. Vice-Chairman, Sir, the Administrative Tribunals were set up in 1985 under a Central Act and since then Government have already set up 5 Tribunal benches of the probably three more are being set up by the end of this month and they have committed before the Supreme Court that they will set up 7 more at various places.

The idea of establishing these Tribunals arose because of the large number of cases pending in various courts. The courts are already burdened with other matters of dispute. but cases regarding service matters sometimes outnumbered other cases delaying the decisions of the courts concerned. To that extent the concept is very good. It has been tried in various countries and it reduces delays in justice because the procedures in the Tribunals admit of a large degree of elasticity and flexibility than what is prevailing in the courts.

When this idea cams up and when the Act was passed, there were some apprehensions among the Government employees, because the Act provided for a three member Tribunal consisting of mostly the retired civil servants and retired judges. That itself created some suspicion in the minds of employees that they will not be able to get justice from these Tribunals. Also the Allahabad High Court gave a judgement and it held that cases under Art. 226 cannot be touched by the Tribunals and only those under Art. 225 can be dealt with by them. There was this judgment and also there were some doubts about the employees covered by the Industrial Disputes Act coming within the purview of the Tribunal also. I am happy that this amendment clears all the doubts and removes these apprehensions and also honours the Supreme Court judgement that its jurisdiction under Art. 32 of the Constitution should not be tampered with. But there is one snag in this Bill and in the original Act also that under sub-section (1) of Section 20, it has been stipulated that you can take recource to the Tribunal only after exhausting all channels of representation. And we know in the Government how much time it takes to exhaust all channels, how many years it would take. Therefore, if you stipulate that one can go to the Tribunal only after exhausting the normal channels of appeal, I am afraid the very purpose of the Act would be nullified.

Another point which I would like to mention here is--this may not be directly related to the Bill here but in the context of the Government's declared policy of toning up administration in the country and also in view of the need to reduce the number of cases going before the Tribunals—we have to lay more stress on streamling the system itself and removing the deficiencies in the system rather than removing the individual grievances. Individual grievances will multiply even if you appoint 15 Tribunals or 1,500 Tribunals unless you remove the deficiencies in the system itself. There is a need to revamp the Administration itself. The cumbersome procedures, the delays in Administration, the delays leading to corruption. these have to be set right immediately. I read at one place that there are 55 million records in the Government of India and if you put the files in the Government of India one after another, it would cover 550 kilometres. If this kind of paper work is involved in he Administration, I doubt how efficiently the Government machinery can function.

Then, people accuse the Government officials of apathy, inefficiency and what not. But I submit, Sir, there is no guarantee or security, there is no cover for an honest officer if he commits a genuine mistake because he is under the constant threat of a Vigilance inquiry or a CBI inquiry and, as a result, he is never prepared to take the risk. Therefore. the system of pushing up the file and pushing down the file prevails. Everyone tries to push up the file. He does not want to take the responsibility and until it goes to the Ministry on the Prime Minister, the file is not cleared. Therefore, there should be a method of protecting such officers who commit genuine mistakes in the discharge of their duties, and there should also be reward for officers who show initiative in administrative matters. There is no such system and and one has to take his turn.

[Shri Parvathaneni Upendra]

You know how much deadwood is there in the Administration among the top echolons, and young officers, bright officers, officers who show initiative are rotting. Therefore, there is no initiative, there is no dynamism in the Administration. Therefore, that also has to be looked into.

I have also seen a lot of frustration among the officers because there is no reward for this kind of initiative. Also, the system of confidential reports itself is defective. I had the opportunity of dealing with a number of confidential reports earlier and know how they are written, a very efficient officer; very hard-working." And at the end he writes, "He lacks leadership qualities; he can be a good follower." Or he writes, 'He is a very goor officer; showed good results; but his integrity is doubtful." With one sentence you can ruin his carrier, I have seen several officers suffering, those who had to occupy higher positions, because somebody does not like his face or that somebody's wife does not like him. Because, you have to please not only the sahibs in the Administration but also the "memsahibs." The confidential report is jointly written by the top officer and his wife. Unless you remove this constant fear, this atrocious system of confidential reports, you cannot get any good results from the officers.

Sir, in conclusion I only say, unless you assure justice and fairplay to the employees and the official cadre, setting up of any number of Tribunals will not solve your problems. These amendments will be infructuous unless you take very important steps to set right the Administration and bring some dynamism into the Administration. Thank you.

SHRI S. W. DHABE (Maharashtra): Mr. Vice-Chairman, Sir, this Bill has been brought about in view of the interim order. The aims and object of this Bill say that the jurisdiction of the Tribunal will also be extended to those who are governed by the Industrial Disputes Act, 1947.

Sir, when amendments were brought during the Emergency to article 323A and 323B, it was the demand of the working class that the Labour Court, State Industrial Tribunal and National Tribunal, the three-tier system which was in existence though it was useful, because one appeal was abolished, that is to the Labour Appellate Tribunal, it will be useful to dispose off the disputes within a short time, expeditiously, within six months. But the High Court jurisdiction was used by the managements and also appeals were taken by special leave to the Supreme Court. Suggestions were made that the Industrial Disputes Act itself should be amended and like the election petition to let the appeal to lie with the Supreme Court at that time. When a committee was appointed by the All-India Congress Committee to consider the amendment to the Constitution, to the committee we had submitted a memorandum that article 226 by itself was not a sufficient exclusion. Article 227 of the Constitution still remains and gives jurisdiction to the High Court the power of superintendence over all tribunals. Therefor, if article 227 remains in the Constitution, even if the jurisdiction of article 226 is taken away, still the High Court will have the power of superintendence and revisions still lie. Therefore, we had suggested at that time that articles 226 and 227, both should be taken away so as to make it foolproof. Unfortunately, the amendment which has been provided takes away the writ jurisdiction of the High Court, and the jurisdiction is provided under article 136. There is argument in the Supreme Court about article 226. The two articles, 323A and 323B are on different footing. The States will have one tribunal or Bench. But so far as article 323B is concerned, itself provides:

> "(1) ... Provide for the adjudication or trial by tribunals of any disputes."

Sir, today in the place from which I come there are ten Labour Courts, two Benches of Industrial Court, a National Tribunal. If only one tribunal is to work for all the labour disputes in the State, I think, the Administrative Tribunal will take five to ten years to dispose of the cases.

Second was that the litigation must be at the place where the labour is working. The Labour Courts are established in the rural areas, in district places, in many States, in U.P., Bihar and many other States. If from article 323A industrial disputes are taken away like service matters, then, they will go to the seat of the High Court. I am surprised to find how the Government has given an undertaking. The supreme judiciary had no business of the Supreme Court to say where a Tribunal should be located. And surprising the Advocate-General who appeared on behalf of the Government of India, readily agreed that it should be the seat of the High Court.

Now, I will tell you an example. Nagpur was first notified as Administrative Tribunal place having jurisdiction over Marhya Pradesh area and some Vidarbha area. Now with this new law, mandate for the Supreme Court has no jurisdiction, and the Government has accepted it. The Administrative Tribunal has gone from Nagpur to the suburb of Bombay city. Even from Bombay High Court it is 20 miles where the Tribunal is sitting. Now a man who has got a civil suit in the Civil Court at Nagpur or a writ petition in the High Court, as it has been transferred here, he has to go 500 miles away to see the litigation and only to come back by getting adjournment. Civil jurisdiction and other jurisdictions were meant for all these matters so that they will have justice at their peace. If the Tribunals are put only in Ivory towers, the Tribunals will be a failure. The cure will be worse than the disease. Therefore, my first suggestion to the Minister is that he must examine article 232 so that a large number of Administrative Tribunals are appointed, and not merely at the seats of the High Courts. Otherwise it is a Himal task for the two persons sitting in Bombay and disposing of eight thousand to ten thousand cases. UP also has got more than 20,000 service matters pending and it is not possible for one human-being to dispose them of. Therefore, I would like to know from the hon. Minister, apart from the Constitutional provisions, what type of structure of tribunals he is going to establish in the country. If it is going to be only one tribunal for one State and five Benches all over India, it will not eliminate the work, but will increase it. For small litigation if a man from the interior of Maharashtra has to go to the capital where for one trip he has to spend at least Rs. 1,000, it would become very costly for him. Same thing holds for the people of UP, Bihar and other States. If for pension, dismissal and termination cases an individual has to go to far off places, he will have to incur large expenses and it will be very cumbersome for him. The very concept of benches at different places, I am clamouring for is that justice should be done at those places. At least where there are benches of the High Court, there is no reason why no tribunals cannot be established there If tribunals cannot be established under the Act, I am afriaid this scheme is bound to fail.

Article 323(b) gives power to appoint more tribunals at more places, but Article 323(a) only speaks of one bench in one State. If that is the concept, I think the Minister should reconsider it. He should have waited till the Supreme Court says on it finally. I would suggest that the Hon. Minister may have a second look at the whole suggest that the Hon. look at the whole scheme of Art. 323(a) in order to extend the judiciary to enable ordinary worker or Government servant to get justice at the place of his work of where he is residing.

श्री कल्पनाथ राय : आदरणीय उपसभाध्यक्ष महोदय, हमारे माननीय मंत्री महोदय ने जो प्रशासनिक अधिकरण (संशोधन) विधेयक, 1986 प्रस्तुत किया है मैं उसका समर्थन करने के लिये खड़ा हुआ हूं। इस विधेयक में मन्त्री महोदय ने इसके उद्देश्य और कारणों के बारे में स्पष्ट रूप से बतलाया है कि केन्द्रीय प्रशासनिक अधिकरण पांच न्यायपीठों सहित प्रशासनिक अधिकरण अधिनियम, 1985 के उपबन्धों के अनुसरण में 1 नवम्बर, 1985 को स्थापित किया गया था। उसकी स्थापना से पूर्व संविधान के अनुच्छेद 32क की और

[श्री कल्पनाथ राय]

प्रशासनिक अधिकरण अधिनियम के उपबंधों की संवैधानिक विधि मान्यता पर आक्षेप करते हुये विभिन्न उच्च न्यायालयों में और उच्चतम न्यायालय में रिट याचिकायें फाइल की गयी थी। इन रिट याचिकाओं में मुख्य प्रतिविरोध यह था कि संविधान के अनुच्छेद 32 के अधीन उच्चतम न्यायालय की और संविधान के अनुच्छेद 226 के अधीन उच्च न्यायालयों की रिट अधिकारिता संविधान का संशोधन कर के भी नहीं ली जा सकती है। यद्यपि उच्चतम न्यायालय ने, अंतरिम आदेश द्वारा, संविधान के अनुच्छेद 32 के अधीन उच्चतम न्यायालय में फाइल की गयी याचिकाओं के केन्द्रीय प्रशासनिक अधिकरण को अन्तरण किये जाने को रोक दिया, तथापि, उसने अनुच्छेद 226 के अधीन रिट याचिकाओं के अन्तरण को इस शर्त के अधीन रहते हुये नहीं रोका कि सरकार अधिनियम में कुछ संशोधन करेगी। न्यायालय द्वारा सुझाव दिये गये संशोधनों में से एक यह था कि अधिकरण में प्रत्येक मामले को सुनवाई ऐसी न्यायपीठ द्वारा की जानी चाहिये जिस में एक न्यायिक सदस्य और एक गैर न्यायिक सदस्य हो और न्यायिक सदस्यों की नियुक्ति भारत के मुख्य न्यायमूर्ति के परामर्श से की जानी चाहिये। उच्चतम न्यायालय को यह परिवचन दिया था कि अधिनियम में यथोचित संशोधन करने वाला विधेयक यथासंभव शीघ्र संसद के समक्ष लाया जायेगा। केन्द्रीय प्रशासनिक अधिकरण ने भी उच्चतम न्यायालय के पूर्वोक्त निदेशों अनुसार न्यायपीठों में काम करना आरंभ कर दिया था। ऊपर निर्दिष्ट रिट याचिकाओं की सुनवाई जनवरी, 1986 में किसी समय होने वाली थी, अतः राष्ट्रपति ने 22 जनवरी, 1986 को प्रशासनिक अधिकरण (संशोधन) अध्यादेश 1986 प्रख्यापित किया जिससे कि उच्चतम न्यायालय में दिये गये आश्वासन को प्रभावी बनाया जा सके और अधिनियम के प्रशासन में आवश्यक पाए गए कुछ अन्य संशोधन किये जा सकेंगे। आदरणीय उपसभाध्यक्ष महोदय, इस संशोधन विधेयक में स्पष्ट रूप से यह व्यवस्था की गई है कि कर्मचारियों के द्वारा जो रिट कोर्ट में की जाती है सुप्रीम कोर्ट में की जाती है, एक ही जगह ट्राइब्युनल हो जिसमें इनका फैसला हो। उस ट्राइब्युनल में प्रशासन का भी एक प्रतिनिधि होगा और जूडीशियरी का भी। जो बातें जूडीशियरी के लोग समझते हैं उनका अनुभव और जो प्रशासनिक अधिकारी हैं उनको जिन प्रश्नों की समझ होती है, वे अपना अनुभव दें और दोनों मिलकर न्याय दिला सकते हैं। तो प्रशासनिक अधिकारी और न्यायपालिका दोनों के प्रतिनिधि मिलकर सही निर्णय कर सकेंगे।

आदरणीय उपसभाध्यक्ष महोदय, जो सरकार ट्राइब्युनल संशोधन का बिल लाई यह सराहनीय कदम है। हमारे मित्र भाटिया जी ने जो शंकायें उपस्थित की मैं उनमें कुछ तर्क मालूम होता है। पहले प्रशासनिक अधिनियम बनाया गया, फिर सरकार ने उसमें कुछ संशोधन किये। कुछ ऐसे प्वाइंट्स हैं जिनकी तरफ हमारे मित्र भाटिया जी ने सरकार का ध्यान आकर्षित किया है। मैं निवेदन करूंगा कि भाटिया जी के सुझावों पर सरकार ध्यान दे और ऐसी व्यवस्था करे जिससे कि भविष्य में हमारे कर्मचारियों को न्याय मिल सके। जो यह कदम उठाया गया है वह सही है। किसी भी देश में कोई न कोई समस्या उपस्थित होती है। हमारे मित्र उपेन्द्र जी ने कहा कि कर्मचारियों का विक्टिमाइजेशन होता है। लेकिन जो सरकारी कर्मचारी हैं उनको अनुशासन में रहकर काम करना पड़ता है। दुनिया में किसी भी सरकार के कर्मचारियों को, चाहे वह पूंजीवादी सरकार हो, साम्यवादी हो, लोकतांत्रिक समाजवादी सरकार हो या तानाशाही सरकार हो, या फासिस्ट सरकार हो, नौकरी करने वालों को अनुशासन में काम करना पड़ता है। यदि उनपर कोई ज्यादती हो तो ट्राइब्युनल या न्यायपालिका में जाते हैं। यह जो संशोधन लाया गया है यह बहुत ही सराहनीय कदम है जिसके माध्यम से ऐडमिनिस्ट्रेटिव आफिसर और न्यायपालिका के प्रतिनिधि मिलकर न्याय दिलाने में मदद करेंगे। मैं इन शब्दों के साथ मंत्री जी द्वारा प्रस्तुत विधेयक का समर्थन करता हूं।

श्री कैलाशपति मिश्र : उपसभाध्यक्ष महोदय, प्रारम्भ में ही इस विधेयक की निरर्थकता के बिन्दुओं का मैंने उल्लेख किया

हैं । बहस के बाद मैं अब और निश्चित रूप से इस निष्कर्ष पर पहुंच गया हूं कि यह विधेयक बेकार है, कष्टदायक है और कई माननीय सदस्यों ने जो कि विधि वेत्ता भी हैं, उन्होंने भी जो विचार प्रकट किए हैं, आदरणीय भाटिया जी ने जैसे कहा कि किसी न किसी दिन सर्वोच्च न्यायालय में जाने के बाद इस विधेयक का जनाजा निकल जाएगा, यह टिकेगा नहीं, सारी शंकाओं के देखने के बाद मैं मंत्री महोदय आग्रह करूंगा कि इसे पास करने में जल्दीबाजी न करें । वे इसको वापस ले लें और यदि वापस लेने के लिये वे तैयार नहीं हैं तो इसे सेलेक्ट कमेटी में भेज दें और अच्छी तरह से विचार विमर्श करने के बाद इस विधेयक को लायें । इतना ही मुझे इस पर कहना है और मैं इसका विरोध करता हूं ।

SHRI P. CHIDAMBARAM: Mr. Vice-Chairman, Sir, I am grateful to the hon. Members for broadly welcoming the Amendment Bill. They have also taken the opportunity to seek clarifications on some issues as well as to point out what in their opinion are possible defects in the Bill. Sir, I shall be very brief, because as I said, they have broadly welcomed the Bill. This is a non-controversial Amendment Bill.

Sir, the Central Administrative Tribunal which is the only Tribunal that has been established so far under this Act came into being on the 1st November, 1985. On that day we established five Benches at New Delhi, Allahabad, Calcutta, Madras and New Bombay. We had prepared a phased programme for establishing more Benches and we promised that we would establish three more Benches before the 31st of March. I am glad to tell the House that we did so even on the 3rd of March. Three more Benches have been established at Chandigarh, Bangalore and Gauhati. We have made a commitment that we shall establish seven more Benches at Jodhpur, Jabalpur, Ernakulam, Hyderabad, Ahmedabad, Patna and Cuttack.

SHRI S. W. DHABE: All seats of High Courts.

SHRI P. CHIDAMBARAM: Members will recognise that we are obliged to establish Benches in these places, in the first instance. Distinguished lawyers have spoken in this House. We are taking away the power of the High Court under article 226 and article 227. I will meet Mr. Mitra's point a few minutes later. But when we take away the power of the High Court under article 226 and article 227, there is a corresponding obligation that there will be a forum in the place where the permanent seat of the High Court is now located, so that the petitioner who could otherwise go to the High Court will have the Tribunal as a forum of redress. Now this does not mean that we will not establish Benches elsewhere. This does not mean that the Benches will not sit in circuit in other places in the State. In fact, Members can be reassured that it is our intention to take these Tribunals close to the places where there is a concentration of Central Government servants. The first part of the programme is that we should establish Benches in places where the permanent seats of the High Courts are located. Wherever a High Court is now sitting in Benches, as for example in UP, we will have to evolve a programme whereby a Bench of the Tribunal can be located in the other place also or the existing Bench of the Tribunal will sit in circuit. In future where we find that there is a large concentration of Central Government employees, a large concentration of employees belonging to public sector undertakings which may be notified, it is our intention, Members can be reassured, to set up Benches or at least provide for circuit sitting of Benches so that petitioners will have an easy and convenient forum to redress their grievances.

श्री कैलाशपति मिश्र : इस में रांची का भी उल्लेख नहीं है ।

संसदीय कार्य विभाग में राज्य मंत्री (राज्य सभा) (श्री सीता राम केसरी): रांची के बारे में कहने की क्या जरूरत है, वहां तो मैंटल हास्पीटल है ।

SHRI P. CHIDAMBARAM: As far as the working of the Tribunal is concerned, I can share with the hon. Members that we are quite happy with the way the Tribunals have started working and the feed-back that I have received is that Government servants are, by and large, happy with the speed and effectiveness which the Tribunals are dispensing justice. Sir, I have got figures with me, but I do not want to take up the time of this House in reading out these figures. A large number of cases have been transferred from the High Courts. In the month of February alone, the five Benches of the Tribunal disposed of 266 cases. Now many lawyers will agree with me that it is rarely that we come across a situation where five High Courts can dispose of 266 service cases in one month. And February is one of our smaller months. So I believe that with the passage of time, when these Tribunals take root not and more and more Government servants come to know about these Tribunals, we will be able to provide speedy and effective justice to Government servants and that, by and large, this experiment will be found to be beneficial to Government servants.

Sir, as far as the State Tribunals are concerned, many States have written to us to establish Tribunals. We are only waiting for the amending Bill to be passed because we do not want to establish Triunals under the parent Act when a Bill to amend it is pending. After this amending Bill is passed by Parliament we will establish tribunals for each State. And what I said for the Central Administrative Tribunal will also apply to the State Administrative Tribunal. Its principal bench, I believe, will be located in the seat of the High Court but it will also have other benches in other places within the State where there is a large concentration of State Government employees.

The next question which has been touched upon is Article 32 read with Article 323A. Article 323A passed by Parliament is an amendment to the Constitution. I am fully conscious that it enables Government to past a law excluding the power not only of the High Courts under Article 226 and Article 227 but also the Supreme Court under Article 32. In fact, Article 323A(d) is quite specific. It says that "a law made by Parliament may exclude the jurisdiction of the Supreme Court under Article 136." The implication is quite clear. We can exclude the jurisdiction of the Supreme Court under Article 32. It is not that the Supreme Court directed us to make an amendment restoring the power to the Supreme Court. In fact, I have the Order before me. The Supreme Court merely in exercise of its power stayed the provision by which we excluded consideration under Article 32. Government have reconsidered the matter. After I joined the Ministry, I examined the matter and it was my view and the view of the Prime Minister that this is not an occasion whereby we need join issue with the Supreme Court on whether we can pass a law taking away the power under Article 32. And what is our experience? Our experience is that most service matters are filed in the High Courts and it is only a rare service matter which invokes Article 32 which, as distinguished Members pointed out, itself is a fundamental right to enforce other fundamental rights. Most service cases, the bulk of the service cases, do not deal with fundamental rights *per se*. They deal with statutory rights, they deal with rights under the rules made under the Proviso to Article 309, they deal with allegations of violation of principles of natural justice. Incidentally they attract Articles 14 and 16. But it is a rare case which is filed in the Supreme Court invoking Article 32. And my experience has been that the Supreme Court itself is quite restrained in admitting a petition under Article 32. They invariably direct the petitioner to go to the

High Court and first seek his relief under Article 226. So, after careful consideration, and not because we believe that we do not have the power, after careful consideration, Government felt that we could amend the Act and not take away the power of the Supreme Court to deal with an original petition under Article 32, but to confine this Act for the present time, to exclude the jurisdiction of the High Courts under Article 226 and Article 227. I am an optimist and I am optimistic that after allowing the tribunals to work for five years, six years or ten years, once these tribunals win the confidence of the Government servants, the litigants for whom they are meant, once the nation has confidence in these tribunals, once our judicial system gains confidence in this once the Supreme Court comes to the conclusion that these tribunals are exercising their powers fairly, impartially, I think we could always, after six or seven years, amend the Act once again, if necessary, to exclude even the jurisdiction of the Supreme Court under Article 32. One lives and learns. Law is never a permanent feature as this very amending Bill would have made it clear. We have to work our laws according to the felt needs of the times. We have to work our laws according to the experience we gain. I think and Government thinks that this is not the time and this is not the issue on which one needs challenge the power of the Supreme Court under Article 32 or debate the power of the Parliament to take away the power under Article 32.

SHRI P. BABUL REDDY: What about article 136?

SHRI P. CHIDAMBARAM: Article 136 cannot be taken away because, as my distinguished friend knows, article 323A(d) specifically says that you cannot take away the power under article 136 and we do not intend taking away the power under article 136. We are going through a delicate period in our Constitutional development and one has to recognise these aspects when one makes a law. One does not make a law for the sake of making a law. One makes a law for the sake of certain specific purpose and with specific objective and my interest is in advancing the objectives rather than making an academic law and allowing the whole thing to be tied down in litigation for several years and not achieving the objecties for which we are making this law.

Sir, the honourable Member, Shri Dhabe, pointed about something about articles 226 and 227. Whatever doubts there might have been in the parent Act about taking away the powers under article 227, I believe that we have clarified that doubt. Section 27 of the parent Act has been amended by clause 18 of the Bill and if the Members will kindly look at section 27 and the amending clause 18, they will find that we have made it amply clear that the orders of the Tribunal shall be final and the amended section read thus:

> "Subject to the other provisions of this Act and the rules the order by a Tribunal finally disposing of an application or an appeal shall be final and shall not be called in question in any court including a High Court and such order shall be executed, etc. etc...."

Section 14, by which we have constituted the Tribunal, provides:

> "The Tribunal shall exercise all the jurisdiction, powers and authority exercisable immediately before that date by all courts except the Supreme Court."

Section 14 nd section 27 as amended by clause 18, in my opinion, make it amply clear that the powers of the High Court, both under article 226 article 227, are taken away and these

(Shri P. Chidambaram)

powers now vest solely in the Tribunal established under this Act.

SHRI S. W. DHABE: That was there in many Acts earlier and it does not take away the jurisdiction.

SHRI P. CHIDAMBARAM: As far as section 2(b) is concerned, which we have deleted, a question was raised as to whether we can provide a dual remedy. I think the question has been answered by another honourable Member. In fact, there is a dual remedy today. The railway employees, the P&T employees, etc. have a dual remedy today. They can go. Under the Industrial Disputes Act or they can go to the High Court under article 226. All that we have done is that we have vested the powers in the Tribunal. Section 2(b), as it originally stood, had given rise to a doubt whether all matters on which a workman is governed by the Industrial Disputes Act would stand excluded from the forum of the Tribunal or whether it is confined to Section 2A. I made this remarks in my introductory speech. In order to avoid such an ambiguity, we have said that all Government servants who are workmen within the meaning of the Industrial Disputes Act can also go to this Tribunal. I personally believe that this Tribunal is an easier forum. Members know that under the Industrial Disputes Act, either under section 10 of the Act, or in the case of an individual dispute under section 2A, one must seek a reference by the appropriate Government and that is a long-winding process. It is not easy to get a reference, in my opinion, and one finds that the State Governments are very reluctant to refer the disputes of employees against the State Government. Today, we have a forum, the Tribunal, whereby a Government servant, who is a workman, who is dismissed, who is removed, who is reduced in rank, who is retrenched or whose service conditer of right, go to the Tribunal. Now this is a considerable and distinct improvement and those of us who champion the cause of the working class must welcome this amendment because, today, as a matter of right he can take within him a piece of paper, go to the Tribunal, lodge his petition and have his hearing in the next few days. He need not go to a labour officer, he need not go through the tortuous process of conciliation, he need not wait upon the State Government or appropriate Government for reference, and he need not depend upon a union espousing his cause. Today, as a matter of right an individual, a Government servants who is also a workman can go to the tribunal. I believe the whole House will welcome this as a distinct improvement upon the parent Act as the present set of laws.

Sir, as far as the composition of the bench is concerned, a lot of criticism was directed against including members from the civil services. Sir, I believe that the same criticism was advanced when the parent Bill was debated in this House and in the Lok Sabha and was answered ably by my learned predecessor. I do not wish to repeat all those arguments. Well, I will just point out the purpose of this tribunal. The purpose of this tribunal is to sort out service matters. Hon. Members Mr. Bhatia said that the service law has become very complicated. Let me ask myself, who has made this service law complicated, why has service law become complicated? Bureaucrats may have contributed to the complication in the law. But let us not deny it that lawyers and the way in which these rules have been interpreted by courts have also added to the complication. Many of these complications could have been avoided and matters resolved if only somebody who is familiar with the making of service rules and the operation of service rules had sat in judgment over these causes.

Sir, I cannot accept the broad proposition that a member of the civil service can never be a good judge, nor can I accept the broad proposition that every judge of the High Court is competent to deal with service matters. In fact, we know that many Judges are elevated from the Bar, many judges are elevated from the Subordinate Judiciary, many of them practise in the criminal side, many of them practise on the original side, many of them come from the Subordinate Judiciary. They are totally unfamiliar with service law. We have had very distinguished members of the civil service adorning the benches of the High Courts and the Supreme Court. Members are aware of these names. I need not read these names. We had 2 Chief Justices of India who were former members of the I.C.S., Justice Wanchoo and Justice S. R. Das. In Madras, I know we had the distinguished Justice A.S.P. Aiyar and Justice Srinivasan. There have been other Justices, Justice V. Ramaswamy and Justice R. L. Narasimhan. I do not think we should make sweeping statements like that. I think you must test the Government on what kind of people it chooses to fill these posts. Sir, I think Members should ask the Government, who are you appointing, what are the qualifications of the person whom you are appointing, what is his record, is he a good person to man the tribunal or not? I am willing to stand the test of that question. Look at the people we have appointed. We have appointed a distinguished Chief Justice as chairman of the tribunal. We have appointed distinguished judges as Vice-Chairman. We have appointed distinguished senior civil servants as members of the tribunal. I think we can be criticised if we make a bad choice. But I don't think we should be criticised on an *a priori* assumption that a civil service member is not competent to man the tribunal or only a judicial officer is competent to man the tribunal. I can assure the hon. Members and I can assure the House that the Government at the highest level pays the greatest attention to the selection of officers to man the tribunal and we shall continue to give our most anxious consideration before we choose anyone to fill the office of the chairman or vice-chairman or members of the tribunal.

Sir, may I in this connection point out that even the Supreme Court in a couple of judgments has recognised the need for people familiar with service laws to be on this tribunal? Sir, Chief Justice Chandrachud, sitting with three learned Judges, in one case observed:

> "...The constitution of Service Tribunals by State Governments with an apex tribunal at the Centre, which, in the generality of cases, should be the final arbiter of controversies relating to conditions of service, including the vexed question of seniority, may save the courts from the avalanche of writ petitions and appeals in service matters.."

> "The proceedings of such Tribunals can have the merit of informality and if they will not be tied down to strict rules of evidence, they might be able to produce solutions which will satisfy many and displease only a few. There are always a few whom nothing can please."

What we are trying to evolve is a new arbitral quasi-judicial forum which can find solutions to the vexed problems which arise in service matters. We are not debating very intricate or complicated questions of constitutional law in most service law in most service matters. In another case, Justice Chinnappa Reddy said:

> "The fact finding administrative tribunal should invariably be approached in the first instance. An administrative tribunal possessing the necessary expertise and familiarity with administrative procedures and rules may be able to deal with the problems in a satisfactory way."

That is why we have come forward with this Amending Bill where one member will be a judicial member and one member will be an administrative member. It

[Shri P. Chidambaram]

is not as if there is no other parallel. The hon. Members, Shri Babul Reddy I believe, mentioned how our Income-tax Appellate Tribunals have gained the confidence of the people as well as gained the confidence of the judicial system. There is a judicial member in the Income-Tax Appellate Tribunal. There is an accountant member in the Income Tax Appellate Tribunal. But for this reason these tribunals have not been looked down upon. I believe with the passage of time, when we select the correct people and when these Tribunals begin to work better and win the confidence of the litigants, this House will applaud the Government for taking this wise decision to have one judicial member and one administartive member.

Mr. Sukul, hon. Member, wanted a clarification about Section 4, Sub-section 5; He is not here. But let me say that Section 4, Sub-Section 5, has nothing to do with consultation with the Chief Justice of India. Consultation with the Chief Justice of India is to appoint a judicial member of the Tribunal. Section 4, Sub-section (5) provides for a totally different situation namely, where members of the Central Administrative Tribuanl can also be asked to discharge the functions of the State Administrative Tribunal and the members of the State Administrative Tribunal can be asked to discharge the functions of the Bench of the Central Administrative Tribunal. It is to save money. It is for economy. In a small State, you cannot have one Bench of the Central Administrative Tribunal and one Bench of the State Administrative Tribunal. For example, Himachal Pradesh simply cannot afford to have an independent Bench. Therefore, I think we must have the owner whereunder we set up a Bench of the State Administrative Tribubunal and the same members can be asked to discharge the functions of the State Administrative Tribunal.

Section 24 provides for an interim order. The point has been answered by hon. Member, Mr. Mitra. Interim orders can be made by the Tribunal. Interim orders are being made by the Tribunal.

My learned friend, hon. Member Mr. Upendra, said that Section 20, Sub-section (1) which requires that all alternative remedies should be exhausted is a barrier to justice. It is in the parent Act. The parent Act was passed by this House as well as by the Lok Sabha. The point was answered on the last occasion. Let me say that even today under Article 226 the High Courts refrain or refuse to entertain a petition until a person has filed the statutory appeal All that we have provided here is, if the statutory rules provide for a statutory appeal, you must file the statutory appeal. Beyond that, we are not insisting that you should file a revision petition or a review petition or a memorial. But if statutory appeal is provided, even under today's legal position, you must exhaust the statutory appeal before approaching the High Court. All that we have said here is: exhaust your statutory appeal and then coms to the Tribunal. If an order is not passed on the statutory appeal within the prescribed period, you may ignore even that pendancy of the statutory appeal and come to the Tribunal.

Sir, I think I have answered most of the point or rather the principal points raised by hon. Members. Sir, we do not claim infallibility. Anyway, I do not claim infallibility. After I came in, I have examined the Act. We found that there were some provisions which required amendment and some which required improvement. I believe that this Bill is an improvement. May be, after the working of the Tribunal, we may find that we have still to make improvements. I am certainly modest enough to admit that we are open to suggestions. We are open to suggestions not only from the Supreme Court but also from the hon. Members. As and when necessary, we can always come back and make improvements. These laws are made with certain objectives and certain purposes. Laws are made to serve certain objectives. And if we find that these objectives are not being advanced, I believe, the House will agree with me, that we should make necessary amendments. We have come at the earliest opportunity to make these amendments so that these Tribunals can function without impediment. We are optimistic that these

amendments will satisfy the suggestions made by the Supreme Court on one or two points. And let me repeat that article 32 was not a suggestion of the Supreme Court. It was a decision taken by the Government. The Supreme Court's suggestion dealt with the composition of the Benches and consultation with the Chief Jusice of India. On these two questions, I think....

SHRI P. BABUL REDDY: The Supreme Court gave a suggestion indirectly by refusing to transfer the cases pending before them while transferring the cases from the High Court.

SHRI P. CHIDAMBARAM: Government takes note of direct suggestions. Government also, I believe, has the intelligence to know what else is necessary. And let me say, I personally think that the situation is not so grave that entertaining writ petitions under article 32 by the Supreme Court is going to come in the way of the functioning of these Tribunals. Sir, while I am grateful to the hon. Members for broadly supporting this Bill, I do hope that the reservations expressed by some of the Members no longer survive and I do sincerely hope that the whole House will adopt and pass this amending Bill without any dissent and without any reservation.

Sir, I commend this Bill for the adoption of the House.

THE VICE-CHAIRMAN (SHRI M. P. KAUSHIK): Mr. Kailash Pati Mishra, do you insist on your Resolution?

श्री कैलाशपति मिश्र : यदि मंत्री जी आग्रह करते हैं, तो मैं वापिस कर लेता हूं ।

The Resolution was, by leave, withdrawn

THE VICE-CHAIRMAN (SHRI M. P. KAUSHIK): Now, I will put the Motion moved by the Minister to vote. The question is:

"That the Bill to amend the Administrative Tribunals Act, 1985, be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI M. P. KAUSHIK) We shall now take up clause by clause consideration of the Bill.

Clauses 2 to 26 were added to the Bill. Clause 1, the Enacting Formula, and the Title were added to the Bill.

SHRI P. CHIDAMBARAM: Sir, I move:

"That the Bill be passed."

The question was put and the motion was adopted.

SHRI PARVATHANENI UPENDRA: Well done by the Minister.

THE VICE-CHAIRMAN (SHRI M. P. KAUSHIK): Now, the statement by Shri Mirdha.

Statement by Minister

Formation of a Corporation for Bombay and Delhi Telephone Systems Crief another Corporation for Overseas Communications Service

THE MINITER OF STATE OF THE MINISTRY OF COMMUNICATIONS (SHRI RAM NIWAS MIRDHA): Mr. Vice-Chairman Sir, the Government have decided to entrust the management, control and operation of telephones, telex and other telecommunication Service excluding Public Telegraph Service in the Union territory of Delhi and in the areas falling in the Bombay Municipal Corporation, the new Bombay Corporation and the Thane Municipal Corporation to a Public Sector Company under the administartive control of the Telecommunicatin Board. This Company has been incorporated under the Companies Act, 1956 and is expected to start functioning w.e.f. 1st April 1986. This new Corporation is designated as "Mahanagar Telephone Nigam Limited."

Two of the main objectives of the Corporation will be:—

(a) To establish, develop, provide, operator and maintain all types of telecommunication services including telephons, telex, telematics etc., but excluding the Public Telegraph Services.